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No. 93-208

In The

Supreme Court of the United States

October Term, 1993

IDAHO HISPANIC CAUCUS, INC.,
an Idaho Non-Profit Corporation, et al.,

Appellants,

v.

STATE OF IDAHO, et al.,

Appellees.

On Appeal From The United States District Court For The District Of Idaho

BRIEF OF APPELLANTS IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

1. The Ninth Circuit Court of Appeals did have the authority to transfer the appeal to this Court.

2. Appellants, on this record, have presented a substantial question.

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STATEMENT OF FACTS

The Statement of Facts is presented in Appellants' Jurisdictional Statement, pages 4 through 10.

ARGUMENT

1. THE COURT POSSESSES JURISDICTION OVER THIS APPEAL BECAUSE THE COURT OF APPEALS ACTED WITHIN ITS AUTHORITY WHEN IT TRANSFERRED THE APPEAL TO THIS COURT

The Motion to Dismiss by the State of Idaho should be denied because jurisdiction is proper. The jurisdiction of this Court was invoked based on 28 U.S.C. § 1253 (1988), which allows direct appeals from decisions of three-judge courts. Appellees seek to circumvent any hearing of the substantive issues presented on appeal by narrowly interpreting 28 U.S.C. § 1631. Appellees challenge the Ninth Circuit Court of Appeal's use of 28 U.S.C. § 1631 to effect transfer of this appeal to this Court. The language of 28 U.S.C. § 1631 provided the Ninth Circuit Court of Appeals with the necessary authority to transfer the appeal. Specifically, 28 U.S.C. § 1631 provides:

> Transfer to cure want of jurisdiction.
>
> Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any

> other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

In Appellee's Motion to Dismiss (p.7), they note that 28 U.S.C. § 1631 grants the Ninth Circuit Court of Appeals some authority to transfer cases to cure jurisdictional defects. Appellees, however, contend that the definition of "such court" as "defined" by 28 U.S.C. § 610 does not include the U.S. Supreme Court. 28 U.S.C. § 610 states:

> Courts defined
>
> As used in this chapter the word "courts" includes the courts of appeals and district courts of the United States, the United States District Court of the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Claims Court and the Court of International Trade.

Appellees suggest that 28 U.S.C. § 610 does not specifically mention the United States Supreme Court and therefore the statute did not create the power necessary for the Ninth Circuit Court of Appeals to transfer this appeal to the U.S. Supreme Court. This narrow reading is inconsistent with the purposes behind the statute and if adopted would result in a manifest injustice. As adequately noted by the Appellees in their Motion to Dismiss (p.7), 28 U.S.C. § 1631 was designed to cure jurisdictional defects resulting from complaints or appeals filed in the wrong court.

The legislative intent was to provide a provision which is broadly drafted to permit transfer between any two federal courts. Appellees' narrow interpretation of 28 U.S.C. § 610, however, would severely limit the remedial parameters and intent of the statute. A correct reading of 28 U.S.C. § 610 includes the U.S. Supreme Court within the broad term "courts of appeals." As embodied in Article III, Section 2 of the U.S. Constitution, the U.S. Supreme Court's appellate jurisdiction establishes this Court's status as the ultimate "court of appeal".

Further Appellees relied heavily on this Court's holding in *Donovan v. Richland County Ass'n for Retarded Citizens*, 454 U.S. 389 (1982), to support this motion to dismiss. In *Donovan*, the appellants had appealed to the Ninth Circuit Court of Appeals from the decision of a three-judge panel. Subsequently, the Ninth Circuit rendered an opinion on the merits of the appeal. This Court vacated the Ninth Circuit's judgment on the ground that the Court of Appeals lacked jurisdiction under 28 U.S.C. § 1291 to decide the case on its merits. In accord with this Court's holding in *Donovan*, the Ninth Circuit did not attempt to decide the merits of this case. Instead, the Ninth Circuit utilized its power to transfer codified in 28 U.S.C. § 1631, so that this appeal could be heard on its merits by the appropriate court. As demonstrated by the present appeal, acceptance of Appellees' contentions would deprive Appellants of any meaningful review of the constitutional issues embodied within the appeal.

Under 28 U.S.C. § 1631, the Ninth Circuit Court of Appeals was within its power to transfer this appeal to the U.S. Supreme Court. Pursuant to 28 U.S.C. § 1631, the appeal should proceed as if it had been filed in or noticed

for this Court to which it was transferred on the date upon which it was actually filed in or noticed for the court from which it was transferred. The notice of appeal was timely filed on January 7, 1993 since that was within thirty (30) days of the original entry of judgment by the three-judge District Court. Since this appeal was transferred on June 25, 1993, and the Statement of Jurisdiction was submitted within sixty (60) days of the transfer date, this Court has proper jurisdiction over the matter.

2. THIS APPEAL PRESENTS A SUBSTANTIAL QUESTION AFFECTING THE VOTING FRANCHISE AND RIGHTS OF HISPANICS AND NATIVE AMERICANS

The record establishes that Idaho's Hispanic population and Native American population have been largely disenfranchised from the political process by the drawing of legislative districts in a manner to substantially dilute their proper influence.

This case presents the very substantial question of whether the courts of the United States are open to claims under the Voting Rights Act that a reapportionment plan divests minorities of their ability to influence the election of candidates to political office.

On March 2, 1993, the Supreme Court issued its opinion in *Voinovich v. Quilter*, ___ U.S. ___, 113 S.Ct. 1149 (1993) and confirmed that influence dilution claims are an open question when the Court assumed a minority influence dilution claim is a cognizable claim:

> Appellees in this case, however, do not allege that Ohio's creation of majority black districts

> prevented black voters from constituting a *majority* in additional districts. Instead, they claim that Ohio's plan deprived them of "influence districts" in which they would have constituted an influential *minority*. Black voters in such influence districts, of course, could not dictate electoral outcomes independently. But they could elect their candidate of choice nonetheless if they are numerous enough and their candidate attracts sufficient cross-over votes from white voters. *We have not yet decided whether influence-dilution claims such as appellees' are viable under § 2, Growe, 507 U.S. at ___, n. 5, 113 S.Ct. at 1084, n. 5; see Gingles, supra, 478 U.S. at 46-47, nn. 11-12, 106 S.Ct. at 2764, nn. 11-12 (leaving open the possibility of influence-dilution claims); nor do we decide that question today. Instead, we assume for the purpose of resolving this case that appellees in fact have stated a cognizable § 2 claim.*

Voinovich, 113 S.Ct. at 1155 (emphasis added).

CONCLUSION

We respectfully submit that the Motion to Dismiss should be denied and that this Court should take jurisdiction over and decide this very substantial question which has been left open in the prior pronouncements of this Court.

Respectfully submitted,

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